

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

GREGORY C. KRUG,)
)
Plaintiff,)
)
) CIV-11-1407-HE
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant.)

REPORT AND RECOMMENDATION

On November 28, 2011, Plaintiff, a federal prisoner appearing *pro se* and *in forma pauperis*, filed this action against Defendant United States of America under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671-2680. In his Complaint, Plaintiff seeks damages from Defendant arising from his transfer to a special holding unit at the Federal Transfer Center in Oklahoma City, Oklahoma on two separate occasions, from January 23, 2009 to February 28, 2009, and from October 8, 2009 to October 19, 2009. The matter was referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

On May 15, 2012, Defendant moved for an order to rescind Plaintiff’s *In Forma Pauperis* status (Doc. # 14) and moved to dismiss Plaintiff’s action (Doc. # 15). In a separately-filed Appendix (Doc. # 16), Defendant provided evidentiary support for the

Motion to Rescind Plaintiff's *In Forma Pauperis* Status. In an Order entered May 21, 2012 (Doc. # 17), Plaintiff was advised of his obligations under federal procedural rules in responding to Defendant's Motion to Dismiss, and, with an extension of time granted at Plaintiff's request, given until July 6, 2012, to respond to the Motion. However, to this date Plaintiff has failed to respond or request a further extension of time to do so.

Plaintiff's lack of interest in complying with the Order of the Court combined with the Court's attempt to manage and control its caseload warrant a dismissal of the action without prejudice. See Gripe v. City of Enid, 312 F.3d 1184, 1188 (10th Cir. 2002)(Federal Rules of Civil Procedure authorize sanctions, including dismissal, for litigant's failure to comply with court's orders). See also Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Ctr., 492 F.3d 1158, 1161 n. 2, 1162 (10th Cir. 2007)(*sua sponte* dismissal for failure to comply with court's orders permitted under federal rules, and court need not follow any particular procedure in dismissing action without prejudice for failure to comply). Therefore, Plaintiff's cause of action should be dismissed without prejudice due to his failure to comply with the Court's Order.

In view of this recommendation, Defendant's Motion to Dismiss (Doc. # 15) and Defendant's Motion to Rescind Plaintiff's *In Forma Pauperis* Status (Doc. # 14) should be denied as moot.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the cause of action be

DISMISSED without prejudice for failure to comply with the Court's Order. It is further recommended that Defendant's Motion to Dismiss (Doc. # 15) and Defendant's Motion to Rescind Plaintiff's *In Forma Pauperis* Status (Doc. # 14) be DENIED as moot.

Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by July 30th, 2012, in accordance with 28 U.S.C. § 636. The failure to timely object to this Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

DATED this 9th day of July, 2012.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE